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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,451	10/23/2001	Lisa A.G. Tweardy	1213-01	2404

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EXAMINER

MATHEW, FENN C

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 06/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/001,451

Applicant(s)

TWEARDY ET AL.

Examiner

Fenn Mathew

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 17-25 is/are rejected.
- 7) ☒ Claim(s) 14-16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This action is responsive to the preliminary amendment filed by the applicant on March 1, 2002. As directed by the applicant, paragraph 19 on page 4 of the specification has been replaced with the following,

"FIGS 6A are a set of orthographic views illustrating an anterior subassembly as shown in FIG. 2, incorporating the chin strut shown in FIGS. 3A-3E and the upper and lower anterior front plates seen in FIGS. 4-5;"

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 18 recites the limitation "said latch housing" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 1-5 and 7-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Lerman (U.S. Patent No. 6,267,741). Lerman discloses a cervical brace (10) comprising a chest plate (52) adapted to be secured to the thorax of a wearer; and a chin strut (80) including means for attachment to the chest plate (see fig. 3) and adapted for extension to a point on a chin support (78) of a cervical collar (18) adapted to be disposed adjacent a wearer's chin.
6. Referring to claim 2, Lerman discloses a cervical brace wherein the chest plate comprises a vest. (See fig. 1)
7. Referring to claim 3, Lerman discloses a cervical brace wherein the vest comprises a chest plate (16) and a back plate (12)
8. Referring to claim 4, Lerman discloses a cervical brace wherein the chin strut extends in a straight line from the chest plate to the chin support. (See fig. 3)
9. Referring to claim 5, Lerman discloses a cervical brace wherein the chin support is adjustable relative to the chest plate. (See column 5, lines 15-30)
10. Referring to claim 7, Lerman discloses a cervical brace further comprising a back plate (12), an occipital support (34), and a rear strut (44) extending between the occipital support and the back plate.

11. Referring to claim 8, Lerman discloses a cervical brace further including straps for securing the back plate to the chest plate. (See fig. 1)
12. Referring to claim 9, Lerman discloses a cervical brace wherein the rear strut is adjustable (column 3 lines 45-65) and further comprises a strut lock (42).
13. Claims 11 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Lerman (U.S. Patent No. 6,267,741). Lerman discloses a cervical brace comprising a cervical collar (18) having front and rear portions (see fig. 1), wherein the rear portion comprises an occipital support (34), a vest (see fig. 1) comprising a front plate (16) and a back plate (12), and a rear strut (44) extending between the occipital support and the back plate.
14. Referring to claim 17, Lerman discloses a brace further comprising a head strap (100) extending from the occipital support.
15. Claim 21 is rejected under 35 U.S.C. 102(e) as being anticipated by Lerman (U.S. Patent No. 6,267,741). Lerman discloses a cervical brace comprising a cervical collar (18) having front and rear portions (see fig. 1), wherein the rear portion comprises an occipital support (34), a vest (see fig. 1) comprising a front plate (16) and a back plate (12), means for attaching the front plate to the back plate (see fig. 1), means for attaching the collar and vest (44), and a head strap (100) extending from the occipital support.
16. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Lerman (U.S. Patent No. 6,267,741). Lerman discloses a cervical brace comprising a cervical collar (18) having front and rear portions (see fig. 1), wherein the rear portion comprises

an occipital support (34), a vest (see fig. 1) comprising a front plate (16) and a back plate (12), means for attaching the front plate to the back plate (see fig. 1), and a rear strut (32) extending from said back plate to the rear portion.

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (U.S. Patent No. 6,267,741). Lerman discloses the claimed invention except for the use of hook and loop fasteners to allow adjustability between the chin support and chest plate. Under applicant's own admission, (page 3 paragraph [0024]), it would have been obvious to one having ordinary skill in the art at the time of invention to substitute the integrally molded chin strut (80) and receptacle (64) in order to adjust the chin support relative to the chest plate.

19. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (U.S. Patent No. 6,267,741) in view of Mattingly (U.S. Patent No. 4,913,135). Lerman discloses the claimed invention except for means for independently adjusting the angle of attachment of the rear strut to the back plate. Mattingly discloses a means for independently adjusting the angle of attachment of a front strut to a front plate. (See fig. 28). It would have been obvious to one having ordinary skill in the art at the time of

invention to provide Lerman's device with means for adjusting the angle of attachment of the rear strut to the back plate as taught by Mattingly and illustrated by attachment of a front strut to a front plate, in order to further accommodate users of different physical builds and postures.

20. Referring to claim 13, Lerman, as modified by Mattingly in claim 12 above, discloses a latch (402) and a latch housing (400).

21. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (U.S. Patent No. 6,267,741). Lerman has disclosed the claimed structure. The recited method would have been obvious to one having ordinary skill in the art at the time of invention.

22. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (U.S. Patent No. 6,267,741) in view of Mattingly (U.S. Patent No. 4,913,135). Lerman discloses the claimed invention except for means for independently adjusting the angle of attachment of the rear strut to the back plate. Mattingly discloses a means for independently adjusting the angle of attachment of a front strut to a front plate. (See fig. 28). It would have been obvious to one having ordinary skill in the art at the time of invention to provide Lerman's device with means for adjusting the angle of attachment of the rear strut to the back plate as taught by Mattingly and illustrated by attachment of a front strut to a front plate, in order to further accommodate users of different physical builds and postures.

23. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (U.S. Patent No. 6,267,741). Lerman discloses a cervical collar having front and rear

portions, wherein the rear portion comprises an occipital support, a vest comprising a front plate and a back plate, and means for attachment of the front plate to the front portion. Lerman does not disclose a back plate that is detached from the rear portion. It would have been obvious to one having ordinary skill in the art at the time of invention to have the back plate detached from the rear portion, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

24. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (U.S. Patent No. 6,267,741) in view of Mattingly (U.S. Patent No. 4,913,135). Lerman discloses a cervical brace comprising a cervical collar (18) having front and rear portions (see fig. 1), wherein the rear portion comprises an occipital support (34), a vest (see fig. 1) comprising a front plate (16) and a back plate (12), and means for attaching the collar to the vest (44). Lerman does not disclose a front plate comprising a lower plate slidably and lockably engaged to an upper plate. Mattingly discloses a front plate (see fig. 1) comprising a lower plate (16) slidably and lockably engaged to an upper plate (25). It would have been obvious to one having ordinary skill in the art at the time of invention to substitute the two-piece front plate taught by Mattingly for the front plate disclosed by Lerman in order to provide a front plate that allowed for height adjustment depending on the preferences of a user.

***Allowable Subject Matter***

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25. Claims 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

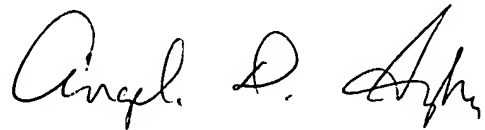
Mars U.S. Patent No. 5,201,702

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

fcm  
June 15, 2002



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